

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Petition of Advantage Cellular Systems, Inc. for Clarification, or in the Alternative, Limited Waiver and Extension of its Porting and Pooling Obligations	) ) ) )	
	)	
Petition of Corr Wireless Communications, LLC for Temporary Waiver of its Porting and Pooling Obligations	) ) )	
	)	
Petition of Plateau Telecommunications, Inc. for Clarification, or in the Alternative, Limited Waiver and Extension of its Porting and Pooling Obligations	) ) ) )	
	)	

**ORDER**

**Adopted: May 7, 2004**

**Released: May 10, 2004**

By the Deputy Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we deny the petitions for waiver filed by Advantage Cellular Systems, Inc. (Advantage), Corr Wireless Communications, LLC (Corr), and Plateau Telecommunications, Inc. (Plateau) to extend the thousands-block number pooling (pooling) and local number portability (LNP or porting) deadlines.<sup>1</sup> In doing so, we find that the petitioners have not demonstrated that special

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<sup>1</sup> See Petition of Advantage Cellular Systems, Inc. for Clarification, or in the Alternative, Limited Waiver and Extension of its Porting and Pooling Obligations, filed Sept. 25, 2003 (Advantage Petition) (requesting a waiver of its porting and pooling obligations until May 24, 2004). The Advantage petition was placed on public notice on October 3, 2003. See *Wireline Competition Bureau Seeks Comment on Requests for Waiver or Limited Extension of the Number Porting and Pooling Requirements of CMRS Providers*, Public Notice, CC Docket Nos. 95-116 and 99-200, 18 FCC Rcd 19849 (2003). No comments were filed in response to this petition. That public notice also addressed the petition of Cellular Mobile Systems of St. Cloud (CMS). CMS Subsequently withdrew its petition. See (continued....)

circumstances exist for an extension of the pooling and porting deadlines or that such an extension is in the public interest.

## II. BACKGROUND

2. *Local Number Portability*. Section 251(b) of the Communications Act of 1934, as amended, (Act) mandates local exchange carriers to provide LNP in accordance with the requirements outlined by the Commission.<sup>2</sup> The Commission, in the *Number Portability First Report and Order*, established the parameters for LNP and required commercial mobile radio service (CMRS or wireless) providers to become LNP-capable pursuant to sections 1, 2, 4(i), and 332 of the Act.<sup>3</sup> Initially, CMRS providers were required to become LNP-capable by June 30, 1999.<sup>4</sup> After the Commission extended that deadline twice, the Commission required CMRS carriers operating in the top 100 Metropolitan Statistical Areas (MSAs) to provide number portability upon request by another carrier by November 24, 2003.<sup>5</sup> CMRS carriers operating outside the top 100 MSAs must become LNP-capable upon request within six months of a request or by May 24, 2004, whichever is later.<sup>6</sup> On November 10, 2003, the Commission concluded that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.<sup>7</sup> The Commission, however, granted wireline carriers operating in

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*Telephone Number Portability*, Order, 19 FCC Rcd 2928 (2004). See also Petition of Corr Wireless Communications, LLC for Temporary Waiver of its Porting and Pooling Obligations, filed Oct. 21, 2003 (Corr Petition) (requesting a waiver of its porting and pooling obligations until May 24, 2004); Petition of Plateau Telecommunications, Inc. for Clarification, or in the Alternative, Limited Waiver and Extension of its Porting and Pooling Obligations, filed Oct. 30, 2003 (requesting a waiver of its porting and pooling obligations until May 24, 2004).

<sup>2</sup> 47 U.S.C. §251(b).

<sup>3</sup> *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8431-42 (1996) (*Number Portability First Report and Order*).

<sup>4</sup> *Id.* at 8440.

<sup>5</sup> See *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, Memorandum Opinion and Order, 17 FCC Rcd 14972 (2002) (*Verizon Wireless LNP Forbearance Order*); *Cellular Telecommunications & Internet Association v. FCC*, No. 02-1264 (D.C. Cir. June 6, 2003) (dismissing in part and denying in part CTIA's appeal of the Commission's decision in the *Verizon Wireless LNP Forbearance Order*). CMRS carriers were required to be LNP-capable by November 24, 2003 if requests from other carriers were received by February 24, 2003. *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14985-86. The *Verizon Wireless LNP Forbearance Order* also lays out the history of the CMRS carriers' LNP deadline extensions. See also *Western Wireless Limited, Conditional Petition for Waiver of Local Number Portability and Thousands-Block Number Pooling Obligations*, Order, CC Docket Nos. 95-116 and 99-200, 18 FCC Rcd 24692 (Wireline Comp. Bur. 2003) (*Western Wireless Order*).

<sup>6</sup> *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14986.

<sup>7</sup> See *Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23706-07 (2003) (*Intermodal LNP Order*).

areas outside of the 100 largest MSAs, in certain circumstances, a waiver until May 24, 2004 of the requirement to port numbers to wireless carriers.<sup>8</sup> The Commission later granted certain local exchange carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide (Two Percent Carriers) that operate in the top 100 MSAs a limited waiver of the wireline-to-wireless porting requirement.<sup>9</sup>

3. *Thousands-Block Number Pooling.*<sup>10</sup> In 1999, the Commission initiated the *Numbering Resource Optimization* proceeding to establish administrative and technical measures that would promote more efficient use of numbering resources. In the *Numbering Resource Optimization First Report and Order*, the Commission adopted a nationwide system for allocating numbers in blocks of 1,000, rather than 10,000.<sup>11</sup> National rollout of thousands-block number pooling commenced on March 15, 2002, starting with the top 100 MSAs and area codes previously in pooling pursuant to state delegations.<sup>12</sup> Initially, only LNP-capable carriers were required to participate in pooling. Then, in the *Numbering Resource Optimization Fourth Report and Order*, the Commission concluded that all carriers, including CMRS carriers, must participate in pooling where it is implemented, except for those carriers expressly exempted.<sup>13</sup> CMRS providers began pooling on November 24, 2002.<sup>14</sup>

4. *The Top 100 MSAs.* In the *Numbering Resource Optimization Fourth Report and Order*, the Commission reaffirmed its conclusion that the largest 100 MSAs include those MSAs identified in the

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<sup>8</sup> *Id.*

<sup>9</sup> *Telephone Number Portability*, Order, 19 FCC Rcd 875 (2004). In particular, the waiver applies to Two Percent Carriers who had not received a request for LNP from either a wireline carrier prior to May 24, 2003, or a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. These carriers have until May 24, 2004 to comply with the wireline-to-wireless porting requirements.

<sup>10</sup> Section 251(e) of the Act gives the Commission plenary jurisdiction over numbering administration. See 47 U.S.C. § 251(e).

<sup>11</sup> *Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, 7621(2000) (*Numbering Resource Optimization First Report and Order*)

<sup>12</sup> *Numbering Resource Optimization*, Order, 17 FCC Rcd 7347, 7348 (Wireline Comp. Bur. 2002).

<sup>13</sup> 47 C.F.R. §52.20(b). In the *Numbering Resource Optimization Fourth Report and Order*, the Commission determined that rural telephone carriers and Tier III wireless carriers in the top 100 MSAs are exempt from pooling unless another carrier makes a request for LNP. The Commission, however, allowed state commissions to file a petition with the Commission requesting delegated authority to mandate exempted carriers to pool within the top 100 MSAs. In addition, the Commission exempted service providers that are the only entity obtaining numbering resources from a particular rate center unless that carrier receives a porting request *Numbering Resource Optimization*, Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116, and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 18 FCC Rcd 12472, 12479-80 (2003) (*Numbering Resource Optimization Fourth Report and Order*);

<sup>14</sup> See *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14986.

1990 U.S. Census report and all subsequent updates of the 100 largest MSAs.<sup>15</sup> On June 6, 2003, the Office of Management and Budget (OMB) recognized 49 new MSAs.<sup>16</sup> As a result of this revision, NeuStar updated its list of the top 100 MSAs and the rate centers within those MSAs.<sup>17</sup>

5. *Requests for Waiver.* The petitioners request clarification that their pooling and porting obligations are those of a carrier providing service outside of the top 100 MSAs.<sup>18</sup> Specifically, Advantage, Plateau, and Corr argue that the rural service areas (RSAs) which they serve are not within the top 100 MSAs for the purposes of pooling and porting.<sup>19</sup> The carriers also claim that they did not receive sufficient notice that their service areas would be included in the top 100 MSAs.<sup>20</sup> They request a waiver of their pooling and porting requirements until May 24, 2004, or six months after receiving a request to port, whichever is later.<sup>21</sup>

6. *Waiver Standard.* The Commission's rules may be waived when good cause is demonstrated.<sup>22</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>23</sup> In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>24</sup> Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.<sup>25</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>26</sup>

### III. DISCUSSION

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<sup>15</sup> *Numbering Resource Optimization Fourth Report and Order*, 18 FCC Rcd 12480; *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, 17 FCC Rcd 252, 307 (2001) (*Numbering Resource Optimization Third Report and Order*).

<sup>16</sup> See OMB Bulletin No. 03-04, rel. June 6, 2003; see also [www.whitehouse.gov/omb/buletins/print/b03-04.html](http://www.whitehouse.gov/omb/buletins/print/b03-04.html).

<sup>17</sup> See [www.nationalpooling.com/documents/fcc/index.htm](http://www.nationalpooling.com/documents/fcc/index.htm)

<sup>18</sup> Advantage Petition at 1, Plateau Petition at 1.

<sup>19</sup> See Advantage Petition at 4-5; Corr Petition at 3-5; Plateau Petition at 4-5.

<sup>20</sup> Advantage Petition at 4-8; Plateau Petition at 4-8.

<sup>21</sup> Advantage Petition at 1; Corr Petition at 1-2; Plateau Petition at 1.

<sup>22</sup> 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*WAIT Radio*).

<sup>23</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

<sup>24</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>25</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>26</sup> *Id.* at 1159.

7. We find that the petitioners have not demonstrated good cause to justify waiving the pooling and porting requirements until May 24, 2004. In particular, we find that the petitioners have not shown that special circumstances warrant an extension of the pooling and porting deadlines or that postponing pooling and porting will serve the public interest.

8. *Special Circumstances.* We are not persuaded by the petitioners' claims that special circumstances exist. As discussed in the *Western Wireless Order*, we find that operating in rural service areas (RSAs) does not constitute special circumstances justifying exemption from the pooling and porting requirements.<sup>27</sup> We therefore reject petitioners' arguments that RSAs are not within the top 100 MSAs for the purposes of pooling and porting.<sup>28</sup> Section 22.909 of the Commission's rules narrowly defines RSAs as cellular markets, which are geographic areas used by the Commission for cellular licensing purposes.<sup>29</sup> Because pooling and porting policies are independent from cellular licensing, the RSA definition does not affect the MSA definition used for numbering resource optimization purposes. Therefore, carriers operating in RSAs that are overlapped by a top 100 MSA are not exempt from the pooling and porting requirements.<sup>30</sup>

9. We also reject petitioners' claims that they face special circumstances because they did not receive sufficient notice that their service areas would be included in the top 100 MSAs.<sup>31</sup> Specifically, the carriers contend that they should not be required to implement pooling and porting in areas that entered the top 100 MSAs as result of the June 6, 2003 OMB redesignations because these areas were not included in the top 100 MSAs as of February 24, 2003.<sup>32</sup> The Commission first indicated its intention to tie the pooling deployment schedule to the largest 100 MSAs in the *Numbering Resource Optimization Notice of Proposed Rulemaking* in 1999.<sup>33</sup> Subsequently, the Commission indicated in a Report and Order that the top 100 MSAs included those MSAs that were used to determine the scope of LNP deployment as well as all areas in any subsequent MSA updates.<sup>34</sup> In addition, wireless carriers have been on notice for several years of the parameters for LNP-capability.<sup>35</sup> Initially, CMRS providers were required to become LNP-capable by June 30, 1999.<sup>36</sup> After extending that deadline twice, the

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<sup>27</sup> *Western Wireless Order*, 18 FCC Rcd at 24697.

<sup>28</sup> See Advantage Petition at 4-5; Corr Petition at 3-5; Plateau Petition at 4-5.

<sup>29</sup> See 47 C.F.R. § 22.909.

<sup>30</sup> See *Western Wireless Order*, 18 FCC Rcd at 24697.

<sup>31</sup> Advantage Petition at 4-8; Plateau Petition at 4-8.

<sup>32</sup> Advantage Petition at 4-5; Plateau Petition at 4-5

<sup>33</sup> See *Numbering Resource Optimization*, Notice of Proposed Rulemaking, 14 FCC Rcd 10322, 10386 (1999) (*Numbering Resource Optimization Notice of Proposed Rulemaking*).

<sup>34</sup> *Numbering Resource Optimization Third Report and Order*, 17 FCC Rcd at 307.

<sup>35</sup> *Number Portability First Report and Order*, 11 FCC Rcd at 8431-42.

<sup>36</sup> *Id.* at 8440.

Commission stated that CMRS carriers operating in the top 100 MSAs are required to provide number portability upon request by another carrier effective November 24, 2003.<sup>37</sup> Thus, petitioners have had sufficient time to follow through with these mandates and prepare for both pooling and LNP.<sup>38</sup>

10. *Public Interest.* We conclude that an extension of the pooling and porting deadlines until May 24, 2004 would not serve the public interest because it unnecessarily delays the benefits to the public. Implementation of LNP for CMRS providers has promoted, and will continue to promote, competition by allowing consumers to move to carriers that would better serve consumers' needs without having to make the difficult choice to give up their numbers.<sup>39</sup> Thus, we find that the public interest is served by implementing porting as soon as possible.

11. We further find that the public interest is not served by unnecessarily delaying the implementation of pooling because, as the Commission has previously stated, wireless carriers should participate in pooling as soon as possible so that numbering efficiencies may be realized.<sup>40</sup> Furthermore, wireless carriers have long been aware of their pooling obligations. Accordingly, we conclude that granting the petitioners request to extend the pooling requirement would be inconsistent with the Commission's policy to promote competition and efficient number use.

#### IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, and the authority delegated under sections 0.91, 0.291, and 52.9(b) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 52.9(b), the petitions filed by Advantage Cellular Systems, Inc., Corr Wireless Telecommunications, LLC, and Plateau Communications are DENIED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief, Wireline Competition Bureau

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<sup>37</sup> See *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14985-86.

<sup>38</sup> See *Western Wireless Order*, 18 FCC Rcd at 24698.

<sup>39</sup> *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14984.

<sup>40</sup> *Numbering Resource Optimization Third Report and Order*, 17 FCC Rcd at 263.